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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,562	10/27/2003	Margherita Jessie Arvanites	Y3.0126	2428

7590 04/21/2004

Mathew R. P. Perrone, Jr.  
210 South Main Street  
Algonquin, IL 60102

EXAMINER
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NELSON, JUDITH A

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/694,562

**Applicant(s)**ARVANITES, MARGHERITA  
JESSIE**Examiner**

Judith A. Nelson

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,240,879, issued to Denesuk et al, in further view of U.S. Patent 6,490,998, issued to Rocher.

Denesuk et al discloses a durable animal pet toy and inferred methods of making said toy, comprising:

a resistant fabric forming an exterior surface (12) of an inner chamber (inferably by sewing; gluing or any other known means of attachment of two articles;

a flexible material (reference character 14, referring to the foam material within the toy) being contained within the inner chamber (as depicted in fig. 2);

a decorative cover (16) enclosing the exterior surface (as depicted in figure 1) and concealing the resistant material, and as being of a fleece material (also note col. 5, lines 9-20); and

further taught as being capable of being shaped in the various forms and shapes (i.e., animals, bones...; as noted in the abstract of Denesuk et al).

The reference of Denesuk et al further teach the importance of calculating the denier or "the mass of a fiber divided by it's length" presumably, so as to manufacture a durable pet toy, as noted in cols. 18-24, of the patent.

Denesuk et al fails however, to teach the resistant fabric being specifically a bullet resistant fabric; the use of a denier nylon material having a specific denier of either 450-1800, 1400 to 1800, 1500 to 1750, or 1650 to 1725; nor does the reference of Denesuk et al by itself teach the presence of a noise maker being additionally contained within the inner chamber of the device; the device inner chamber having a third layer and/or the flexible layer having a second layer.

First with regard to the resistant material being a bullet resistant fabric (i.e., Kevlar) the reference of Rocher teaches the use of Kevlar in an animal chew toy (as noted in col. 2, lines 10-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the use of Kevlar or any other suitable material in the manufacturing of the toy, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Secondly concerning the chosen denier nylon of any of the fabrics in the toy, since it would have been also obvious to a skilled artisan to have chose/ made use of a nylon having a denier of either 450-1800, 1400 to 1800, 1500 to

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1750, or 1650 to 1725, since Applicant has provided no criticality for the ranges of denier in the fabric, and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Thirdly, referring to the to the claimed limitations of there being a noise maker in the inner chamber. The Examiner takes Office Notice of noise-makers being contained within a toy is a well known concept and would involve very little skill to apply to a toy.

Lastly, concerning several of the dependent claims limiting the essential structures, specifically the inner chamber to having multiple layers, it would have been obvious to one having ordinary skill in the art to have provided as many material layers to any of the essential structures of the device, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co., v. Bemis Co.*, 193 USPQ 8.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,237,961; 5,911,197; 6,615,766; 6,663,457; 6,623,328.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judith A. Nelson whose telephone number is (703) 305-0984. The examiner can normally be reached on M-Thur. 9:00 a.m. - 6:30 p.m., alt. Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Judith A. Nelson  
Examiner  
Art Unit 3644

jan  
4/14/04